IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11692 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAGHUNATH RAMSING TEPAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11692 of 2002

MR HR PRAJAPATI for Petitioner No. 1

V.M.Pancholi, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/02/2003

ORAL JUDGEMENT

1. The petitioner has challenged the detention order

dated 23-10-2002 passed against him by the District Magistrate, Surat, whereby the petitioner has been detained under subsection 2(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention suggest that the petitioner has committed various illegalities in the matter of distribution of kerosene and he had unauthorisedly obtained blue kerosene; stored the same at his shop and illegally and sold certain quantity of the said kerosene charging a higher price, and therefore, committed the act of blackmarketing. The petitioner is accordingly detained by way of preventive detention under the provisions of "PBM".

3. The incident in question took place on 19th May,2002 and, at that time, the authorities also seized certain quantity of kerosene from the shop of the petitioner. At the time of inspection on the relevant date, it was found that the petitioner is dealing in blue kerosene even though he was supposed to deal only in free sale white kerosene. Thereafter, the samples were sent to the Laboratory for checking which process took about five months and ultimately, the report was received by the Sponsoring Authority on 4th September,2002. It is required to be noted that even though the report was received by the Sponsoring Authority on 4th September,2002 and ample material was available with the authority for forwarding the papers to the detaining authority and for passing the appropriate order of detention, the detention order came to be passed as late as on 23-10-2002. It seems that the authorities have taken a casual approach in dealing with the matter. Firstly, on spot inspection when it was noticed that the petitioner was illegally dealing in blue kerosene, it was not necessary to wait for such a long time till the FSL report is available, as by doing so, the petitioner was permitted to continue his illegal activity. Apart from the aforesaid apsect also, after receiving the report from FSL, the order was passed after a period of one and a half month. There is absolutely no explanation coming forth on record for such laxity on the part of the detaining authority. When a person is found to betray the people by engaging in the illegal activity of selling blue kerosene at a higher rate, the authorities are required to act promptly without any unreasonable delay. In the instant case, when the FSL report was also available, it is difficult to understand why there is a further delay of one and a half month in passing the

impugned order of detention. Thus, the entire object of detaining the present petitioner is frustrated, and therefore the order of detention is required to be set aside.

4. Mr.Prajapati, learned Advocate for the petitioner has also relied on the decision of this Court in the case of ELESH NANDUBHAI PATEL VS. COMMISSIONER OF POLICE, AHMEDABAD CITY AND ORS., reported in 1997(1) GLH 381. The relevant observations are at paragraph 21 which read as under:

"In the instant case, the last registered case is of May, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 5,1996 i.e. after a delay of 5 months and 15 days. It is ofcourse true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkath v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

5. In the instant case, in my view, the detaining authority unfortunately has taken a very casual approach and the detention order came to be passed after a gap of more than one and a half month from the date of occurrence of the incident. Thus, there being unexplained inordinate delay in passing the detention order by the detaining authority, there is no alternative but to release the petitioner-detenu, and hence, the order of detention is required to be quashed and set aside on this sole ground.

6. It is matter of great regret that even though the petitioner-detenu was found doing blackmarketing activity in the matter of distribution of kerosene as back as on 19-5-2002, the ultimate detention order is passed as late as on 23-10-2002. When a person is required to be

detained under preventive detention, with a view to preventing him from continuing with the illegal activity, no altitude is required to be shown by the authority in waiting for a long time, and then passing the detention order. If there is unreasonable delay in passing the detention order, the very object of preventive detention is lost and that has occasioned in the instant case.

6.1 It is hoped that in future when a person is found to have indulged in such a serious activity of blackmarketing and cheating the people by diverting the essential commodity and selling the same at a higher price, the detention orders will be passed without unreasonable delay.

7. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 23-10-2002 passed against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Raghunath Ramsing Tepan is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J.)

stanley-pbm.